

**Qu. Whether the King, Lords  
and Commons now Assembled,  
be a Legal Parliament, and may  
Act as such?**

**T**HE necessity of a Parliament agreed by the Lords and Commons Voting, that the Throne is Vacant, for there being a Vacancy, there follows an immediat necessity of settling the Government, especially the Writs being destroyed, and the great Seal carried away, put a period to all publick Justice, and then there must be a supply by such means as the necessity requires, or a failure of Government.

**I.** Consider the antecedents to the calling the Convention; that is, about three hundred of the Commons, which is a Majority of the fullest House that can be made, above sixty Lords, being a greater number, than any part divided, amounted to at this great Meeting, the Lord Mayor, Aldermen, and Common Council of the City of London, by application to His then Highness the Prince of Orange, desired him to accept of the Administration of  
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Publick Affairs, Military and Civil, which he was pleased to do, to the great satisfaction of all good People; and after that His Highness was desired to Issue forth His Circular Letters to the Lords, and the like to the Coroners, and in their absence to the Clerks of the Peace, to Elect Knights, Citizens, and Burgeses; this was more than was done in Fifty nine, for the calling a Parliament in April, 1660. for there the Summons was not real, but fictitious (i. e.) in the names of the Keepers of the Liberties of England; a meer notion set up as a form, there being no such persons, but a meer *Ens Rationis*, impossible really to exist; so that here was much more done than in 1659 and all really done, which was possible to be invented, as the Affairs then stood. Besides King Ch. the 2d. had not abdicated the Kingdom, but was willing to return, and was at *Breda*, whither they might have sent for Writs, and in the mean time have kept their form of Keepers of the Liberties, &c. But in the present case there was no King in being, nor any style or form of Government, neither real, or notional left; so that in all these respects, more was done before, and at the calling of this great Convention, than for calling that Parliament (for so I must call it) yet that Parliament made several Acts, in all thirty seven, as appears by *Keebles Statutes*, and several of them not confirmed; I shall instance but in one, but it is one which there was occasion to use in every County of England; I mean the Act for Confirming and Restoring Ministers, being the 17th of that Session; all the Judges allowed of this as an Act of Parliament, tho' never confirmed, which is a stronger case than that in question; for there was only fictitious Summons, here a real one.

III. That without the Consent of any body of the People, this at the Request of a Majority of the Lords, more than half the number

ber of the Commons duly chosen in King Ch. the 2d's time, besides the great body of the City of *London*, being at least esteem'd a 5th part of the Kingdom; yet after the King's Return, he was so well satisfied with the calling of that Parliament, that it was Enacted by the King, Lords and Commons Assembled in Parliament; that the Lords and Commons then Sitting at *Westminster* in the present Parliament, were the two Houses of Parliament, notwithstanding any want of the King's Writ or Writs of Summons, or any defect whatsoever, and as if the King had been present at the beginning of the Parliament; this I take to be a full Judgment in full Parliament of the case in question, and much stronger than the present case is, and this Parliament continued till the 29th of *December* next following, and made in all thirty seven Acts, as above-mentioned.

The 13 *Caroli* 2. chap. 7. (a full Parliament called by the Kings Writ) recites the other of 12 *Caroli* 2. and that after his Majesties return they were continued till the 29th of *December*, and then dissolved, and that several Acts passed; this is the plain Judgment of another Parliament.

1. Because it says they were continued, which shews they had a real being capable of being continued; for a Confirmation of a void Grant has no effect, and Confirmation shews a Grant only voidable, so the continuance there shewed it at most but voidable; and when the King came, and confirm'd it, all was good.

2. The dissolving it then, shews they had a being, for, as *ex nihilo nihil fit*, so *super nihil nil operatur*, as out of nothing nothing can be made; so upon nothing nothing can operate.



Again, the King, Lords and Commons, make the great Corporation or Body of the Kingdom, and the Commons are legally taken for the Free-holders, *Inst. 4. p. 2.* Now the Lords and Commons having Proclaimed the King, the defect of this great Corporation is cured, and all the Essential parts of this great Body Politique united and made compleat, as plainly as when the Mayor of a Corporation dyes, and another is chosen, the Corporation is again perfect; and to say, that which perfects the great Body Politique should in the same instant destroy it; I mean the Parliament, is to make contradictions true, *simul & semel*, the perfection and destruction of this great Body at one instant, and by the same Act.

Then if necessity of Affairs was a forcible Argument in 1660, a time of great peace, not only in *England*, but throughout *Europe*, and almost in all the *World*; certainly 'tis of a greater force now, when *England* is scarce delivered from Popery and Slavery; when *Ireland* has a mighty Army of Papists, and that Kingdom in hazard of final destruction, if not speedily prevented; and when *France* has destroyed most of the Protestants there, and threatens the ruin of the *Low-Countries*, from whence God has sent the wonderful Assistance of our Gracious, and therefore most Glorious King; and *England* cannot promise safety from that Forreign Power, when forty days delay, which is the least can be for a new Parliament, and considering we can never hope to have one more freely chosen, because first it was so free from Court influence, or likelihood of all design, that the Letters of Summons issued by him, whom the great God in infinite Mercy raised to save us, to the hazard of his Life, and this done to protect the Protestant Religion, and at a time when the people were all concerned for one Common interest of Religion, and Liberty, it would be vain when we have the best King and Queen the *World* affords, a full house of Lords, the most solemnly chosen

few Commons, that ever were in the remembrance of any man living, to spend money and lose time (I had almost said to despise providence) and take great pains to destroy our selves.

If any object Acts of Parliament mentioning Writs and Summons, &c.

I answer the President in 1660 is after all those Acts.

In private cases as much has been done in point of necessity; a Bishop provincial dies, and *sede vacante* a Clerk is presented to a Benefice, the presentation to the Dean and Chapter is good in this case of necessity; and if in a Vacancy by the death of a Bishop a Presentation shall be good to the Dean, and Chapter rather than a prejudice should happen by the Church lying void; Surely *a fortiori* — Vacancy of the Throne may be supplied without the formality of a Writ and the great Convention turn'd to a Real Parliament.

A Summons in all points is of the same real force as a Writ, for a Summons and a Writ differ no more than in name, the thing is the same in all Substantial parts; the Writ is Recorded in Chancery, so are His Highnesses Letters; The proper Officer Endorses the Return, so he does here, (for the Coroner in defect of the Sheriff is the proper Officer,) the people Choole by Virtue of the Writ, so they did freely by virtue of the Letters, &c. *concordant parum differunt*, they agree in reality, and then what difference is there between the one and the other.

Obj. A Writ must be in Actions at Common Law, else all pleadings

pleadings after, will not make it good, but Judgement given may be Reversed by a Writ of Error.

*Ans.* The case differs, first, because actions between party and party, are adversary Actions, but Summons to Parliament are not so, but are Mediums only to have an Election.

2. In actions at Law the Defendant may plead to the Writ, but there is no plea to a Writ for Electing Members to serve in Parliament; and for this I have *Littleton's* Argument, there never was such plea, therefore none lies.

*Obj.* That they have not taken the Test.

*Ans.* They may take the Test yet; and then all which they do will be good, for the Test being the distinguishing mark of a Protestant from a Papist, when that is taken, the end of the Law is performed.

*Obj.* That the Oaths of Allegiance and Supremacy ought to be taken, and that the new ones are not legal.

*Ans.* The Convention being the Supream Power, have abolished the old Oaths; and have made new ones; and as to the making new Oaths, the like was done in *Alfred's* time, when they chose him King; *vide* Mirror of Justice, Chap. 1. for the Hierarchy being turn'd to a Monarchy, the precedent Oaths of the seven Kings could not be the same King *Alfred* swore.

Many Presidents may be cited, where Laws have been made in  
Parliament,



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Parliament, without the Kings Writ to Summon them, which for brevity's sake I forbear to mention.

For a Farewell, the Objections quarrel at our Happiness, fight against our Safety, and aim at that which may indanger Destruction.

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Parliament, with the Kings Wife to common them, which for  
privacy's sake I forbear to mention.

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For as far well, the Objections drawn at our Happiness, fight  
(against our Safety, and aim at that which may endanger Dominion.

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